

EXHIBIT 5

Transcript of the Testimony of:

John Cario

Date: February 12, 2015

Case: In Re: M/V MSC FLAMINIA
12 CIV 8892 (AJN)

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1 FLOOD - CARIO

2 MR. NICOLETTI: Objection as to form.

3 You can answer.

4 THE WITNESS: Yes.

5 BY MR. FLOOD:

6 Q. So if Stolt received an instruction "Do not
7 ship if over 27 Celsius," that instruction should be
8 passed on to the ocean carrier because it's a safety
9 warning; is that correct?

10 MR. NICOLETTI: Objection as to form.

11 You can answer.

12 THE WITNESS: Yes.

13 BY MR. FLOOD:

14 Q. And if Stolt failed to do so -- well, Stolt
15 would have an obligation then to do so, would they
16 not?

17 MR. NICOLETTI: Objection as to form.

18 You can answer.

19 THE WITNESS: Yes.

20 BY MR. FLOOD:

21 Q. And doesn't SOLAS require that Stolt pass
22 along such safety warnings?

23 MR. NICOLETTI: Objection as to form.

24 You can answer.

25 THE WITNESS: I don't have any

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2 knowledge of the SOLAS requirements.

3 BY MR. FLOOD:

4 Q. How about the stow away from heat, stow away
5 from any heat source; is that a safety warning?

6 MR. NICOLETTI: Objection as to form.

7 You can answer.

8 THE WITNESS: It's a stowage
9 recommendation.

10 BY MR. FLOOD:

11 Q. You don't believe that's a safety warning.

12 MR. NICOLETTI: Same objection. You
13 can answer.

14 THE WITNESS: It's a stowage
15 recommendation.

16 BY MR. FLOOD:

17 Q. It's not a safety warning.

18 MR. NICOLETTI: Objection as to form.
19 You can answer.

20 THE WITNESS: Everything in the
21 dangerous goods regulations have to do with
22 safety.

23 BY MR. FLOOD:

24 Q. So sitting here, just so I'm clear, sir, is
25 it or is it not a safety warning, stow away from any

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2 heat sources --

3 MR. NICOLETTI: Objection as to form.

4 You can answer.

5 BY MR. FLOOD:

6 Q. -- vessel or other container?

7 A. Yes, to the stow planner.

8 Q. I'm sorry?

9 A. Yes, to the person planning the stowage on
10 the vessel.

11 Q. It's a safety warning?

12 A. Yes.

13 Q. And that should be passed along to the ocean
14 carrier as well?

15 MR. NICOLETTI: Objection as to form.

16 You can answer.

17 THE WITNESS: Yes.

18 BY MR. FLOOD:

19 Q. Stolt, in fact, has a legal obligation to do
20 so; correct?

21 MR. NICOLETTI: Same objection. You
22 can answer.

23 THE WITNESS: I can't answer that
24 question.

25 BY MR. FLOOD:

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2 Q. Well, as the HazMat director for Stolt, would
3 you recommend or would you advise Stolt to pass along
4 that instruction --

5 MR. NICOLETTI: Same objection. You
6 can answer.

7 BY MR. FLOOD:

8 Q. -- to the ocean carrier?

9 A. Yes.

10 Q. Sir, I want to put in front of you
11 Exhibit 165. And I'll represent to you, sir -- in
12 front of you is Exhibit 165, and I'll represent to you
13 this is the booking request for the three DVB
14 shipments which were loaded aboard the FLAMINIA during
15 the casualty voyage. Okay?

16 A. Yes.

17 Q. Let's take a look at temperature monitoring.
18 Below that it says "If container is greater than 27
19 Celsius, the ISO container cannot be shipped."

20 Do you see that?

21 A. Yes.

22 Q. And I believe you just said that you consider
23 that to be a safety warning; correct?

24 MR. NICOLETTI: Objection as to form.

25 You can answer.

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2 THE WITNESS: Yes.

3 BY MR. FLOOD:

4 Q. And that safety warning, therefore, should
5 have been conveyed by Stolt to MSC; correct?

6 MR. NICOLETTI: Objection as to form.

7 You can answer.

8 THE WITNESS: I would have recommended
9 that.

10 BY MR. FLOOD:

11 Q. You would have recommended it. Well, should
12 that -- so it's your testimony that you would have
13 recommended to Stolt personnel to pass that safety
14 warning on to MSC; correct?

15 MR. NICOLETTI: Objection as to form.

16 You can answer.

17 THE WITNESS: Yes.

18 BY MR. FLOOD:

19 Q. Did you see this booking request, sir, at the
20 time of the subject shipment?

21 A. No.

22 Q. And why not?

23 A. Because this is part of the operations group,
24 and I don't see the documents that come in from their
25 customers.

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2 Q. Is there any other temperature warnings -- up
3 top it says Ocean Bill of Lading, and it says
4 "Temperature control instructions. Container to be
5 stowed in stack or below deck to avoid exposure to
6 direct sunlight." And then the next sentence, it
7 says, "Do not stow near heat sources."

8 The sentence "Do not stow near heat sources,"
9 is that a safety warning, sir?

10 MR. NICOLETTI: Objection as to form.

11 You can answer.

12 THE WITNESS: Yes.

13 BY MR. FLOOD:

14 Q. And should that instruction have been passed
15 on to MSC?

16 MR. NICOLETTI: Same objection.

17 THE WITNESS: Yes.

18 BY MR. FLOOD:

19 Q. And do you know whether or not that
20 instruction was, in fact, passed on to MSC?

21 A. I do not know.

22 Q. And when should that instruction have been
23 passed on to MSC; at the time the preliminary DGD was
24 submitted to the ocean carrier?

25 MR. NICOLETTI: Objection as to form.